CALIFORNIA OFFICE OF ADMINISTRATIVE LAW

SACRAMENTO, CALIFORNIA

In re: Request for Regulatory Determination filed by Peggy Horton-Paine concerning the Department of Personnel Administration's Policy requiring State Employees Using Sick Leave to Reveal the Specific Nature of their Illnesses[1]	1990 OAL Determination No. 16 [Docket No. 89-023] December 18, 1990 Determination Pursuant to Government Code Section 11347.5; Title 1, California Code of Regulations, Chapter 1, Article 3

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SYNOPSIS

The issue presented to the Office of Administrative Law is whether or not the Department of Personnel Administration's policy requiring state employees using sick leave to list the specific nature of their illnesses on a standard state form is a "regulation" required to be adopted in compliance with the Administrative Procedure Act.

The Office of Administrative Law has concluded that the policy requiring state employees using sick leave to list the specific nature of their illnesses on a standard state form is a "regulation"[2] required to be adopted in compliance with the Administrative Procedure Act. This conclusion, however, does not mean that the Office of Administrative Law in any way endorses the specific policy at issue here or that the Office of Administrative Law has found that the specific policy complies with other applicable legal requirements.

THE ISSUE PRESENTED [3]

The Office of Administrative Law ("OAL") has been requested to determine[4] whether or not the Department of Personnel Administration's ("Department") policy requiring state employees using sick leave to list the specific nature of their illnesses in blank 8 of the "Absence and Additional Time Worked Report," State of California Standard Form 634, Rev. 10-88 ("Form 634"), is a "regulation" required to be adopted pursuant to the Administrative Procedure Act ("APA").

THE DECISION [5,6,7,8,9]

OAL finds that:

(1) the Department's rules[10] are generally required to be adopted pursuant to the APA;

(2) the challenged rule is a "regulation" as defined in the key provision of Government Code section 11342, subdivision (b);

(3) the challenged rule is not exempt from the requirements of the APA; and therefore,

(4) the challenged rule violates Government Code section 11347.5, subdivision (a).[11]

REASONS FOR DECISION

I. APA; RULEMAKING AGENCY; AUTHORITY; BACKGROUND

The APA and Regulatory Determinations

In Grier v. Kizer, the California Court of Appeal described the APA and OAL's role in that Act's enforcement as follows:

> "The APA was enacted to establish basic minimum procedural requirements for the adoption, amendment or repeal of administrative regulations promulgated by the State's many administrative agencies. (Stats. 1947, ch. 1425, secs. 1, 11, pp. 2985, 2988; former Gov. Code section 11420, see now sec. 11346.) Its provisions are applicable to the exercise of any quasi-legislative power conferred by statute. (Section 11346.) The APA requires an agency, inter alia, to give notice of the proposed adoption, amendment, or repeal of a regulation (section 11346.4), to issue a statement of the specific purpose of the proposed action (section 11346.7), and to afford interested persons the opportunity to present comments on the proposed action (section 11346.8). Unless the agency promulgates a regulation in substantial compliance with the APA, the regulation is without legal effect. (Armistead v. State Personnel Board (1978) 22 Cal.3d 198, 204, 149 Cal.Rptr. 1, 583 P.2d 744).
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> "In 1979, the Legislature established the OAL and charged it with the orderly review of administrative regulations. In so doing, the Legislature cited an unprecedented growth in the number of administrative regulations being adopted by state agencies as well as the lack of a central office with the power and duty to review regulations to ensure they are written in a comprehensible manner, are authorized by statute and are consistent with other law. (Sections 11340, 11340.1, 11340.2)." [Footnote omitted; emphasis added.][12]

In 1982, recognizing that state agencies were for various reasons bypassing OAL review (and other APA requirements), the Legislature enacted Government Code section 11347.5. Section 11347.5, in broad terms, prohibits state agencies from issuing, utilizing, enforcing or attempting to enforce agency rules which should have been, but were not, adopted pursuant to the APA. This section also provides OAL with the authority to issue a regulatory determination as to whether a challenged state agency rule is a "regulation" as defined in subdivision (b) of Government Code section 11342.

The Rulemaking Agency Named in this Proceeding

The Department of Personnel Administration ("Department") was created in 1981[13] "for the purposes of managing the nonmerit aspects[14] of the state's personnel system."[15] The Department succeeded to specific duties and responsibilities of four state departments: (1) the State Personnel Board "with respect to the administration of salaries, hours and other personnel related matters, training, performance evaluations, and layoffs and grievances"; (2) the Board of Control; (3) the Department of General Services "with respect to the administration of miscellaneous employee entitlements"; and (4) the Department of Finance "with respect to the administration of salaries of employees exempt from civil service and within range salary adjustments."[16]

The Director of Personnel Administration also serves as the Governor's representative in negotiations with state employee organizations on matters "regarding wages, hours, and other terms and conditions of employment . . . ."[17] The results of these negotiations are manifested in memoranda of understanding ("MOUs").[18]

Authority [19]

Government Code section 19815.4, subdivision (d), states:

> "The Director [of Personnel Administration] shall:
>
> . . .
>
> "(d) Formulate, adopt, amend, or repeal rules, regulations, and general policies[20] affecting the purposes, responsibilities, and jurisdiction of the department and which are consistent with the law and necessary for personnel administration." [Emphasis added.]

Government Code section 19859 provides in part:

> "(a) Following completion of one month of continuous service, except as otherwise provided in Section 19863.1, each state officer and employee who is employed full time shall be allowed one day of credit for sick leave with pay. . . . Each state officer or employee is entitled to this leave with pay, on the submission of satisfactory proof of the necessity for sick leave AS PROVIDED BY RULE OF THE DEPARTMENT. . . . The department SHALL PROVIDE BY RULE for the regulation and method of accumulation of sick leave for civil

service employees, and may provide sick leave for those who work less than full time."

"(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act." [Emphasis added; capitalization of "as provided by rule of the Department" and "shall provide by rule" added.]

Subdivision (a) of the above statute provides the Department with the authority to determine, by rule, what constitutes the submission of satisfactory proof of the necessity for sick leave.

Government Code section 19860 states that:

"The department may provide by rule for the regulation and accumulation of sick leave credits on an hourly basis for all or certain designated employees. The rate of accrual shall be substantially proportionate to eight hours per month, with amounts earned credited at the end of each pay period." [Emphasis added.]

Title 2, California Code of Regulations ("CCR"), sections 599.745 through 599.751, contain the duly adopted regulations regarding sick leave.[21] Two sections are important for this discussion. Title 2, CCR, section 599.749 provides:

"The appointing power shall approve sick leave only after having ascertained that the absence was for an authorized reason and may require the employee to submit substantiating evidence including, but not limited to, a physician's certificate. If the appointing power does not consider the evidence adequate, the request for sick leave shall be disapproved. [Emphasis added.]

Title 2, CCR, section 599.750 provides:

"Sick leave shall be certified by the appointing power upon forms prescribed by the

Director of the Department of Personnel Administration." [Emphasis added.]

Background: This Request for Determination

The following background and information is based on facts and information submitted in the Department's Response, the California State Employees Association's[22] ("CSEA") comments, and four other comments. We note in this background discussion any matters that are disputed.

On December 1, 1989, Peggy Horton-Paine, a state employee who is a member of Bargaining Unit 1 (members of this unit are in professional administrative, financial and staff services positions), submitted to OAL a Request for Determination challenging a policy of the Department of Personnel Administration which requires state employees using sick leave to reveal the specific nature of their illnesses in blank 8 of the Form 634, which is attached to this Determination as Exhibit A. This policy will be referred to as the "challenged rule."

On May 25, 1990, OAL published a summary of this Request for Determination in the California Regulatory Notice Register,[23] along with a notice inviting public comment. Five comments were timely filed.

Comments from the California Association of Professional Scientists (Bargaining Unit 10), the Alliance of Trades and Maintenance (Bargaining Unit 12), the Association of California State Attorneys and Administrative Law Judges (Bargaining Unit 2) and the Professional Engineers in State Government (Bargaining Unit 9) indicate that the MOUs for these bargaining units have no provisions allowing the employer to seek additional information, diagnosis or evaluation other than a certificate from a licensed physician or practitioner stating that the employee was ill or sick.

On July 9, 1990, the Department submitted its response to this Request. In addition to its Response, the Department submitted a copy of the Arbitrator's Opinion and Award in CSEA v. State of California, Employment Development Department.[24] The arbitrator in that case did not address the issue of whether EDD's requirements regarding sick leave substantiation constituted rules that were invalid and unenforceable because they had not been adopted pursuant to the APA.

II. ISSUES

There are three main issues before us:[25]

(1) WHETHER THE APA IS GENERALLY APPLICABLE TO THE DEPARTMENT'S QUASI-LEGISLATIVE ENACTMENTS.

(2) WHETHER THE CHALLENGED RULE IS A "REGULATION" WITHIN THE MEANING OF THE KEY PROVISION OF GOVERNMENT CODE SECTION 11342.

(3) WHETHER THE CHALLENGED RULE FALLS WITHIN ANY ESTABLISHED GENERAL EXCEPTION TO APA REQUIREMENTS.

FIRST, WE INQUIRE WHETHER THE APA IS GENERALLY APPLICABLE TO THE DEPARTMENT'S QUASI-LEGISLATIVE ENACTMENTS.

The APA generally applies to all state agencies, except those in the "judicial or legislative departments."[26] Since the Department is in neither the judicial nor legislative branch of state government, we conclude that APA rulemaking requirements generally apply to the Department.[27]

The subject matter of this Request, however, requires that we go beyond this general conclusion. One of the areas we need to examine is the statutory law governing relations between the state and its employees. Another area we need to examine is the MOU for Bargaining Unit 1.

The Dills Act[28]

Government Code sections 3512 through 3524, known as the Ralph C. Dills Act ("Dills Act"), set forth the statutory law governing relations between the state and its employees. One purpose of the Dills Act is "to promote full communication between the state and its employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between the state and employee organizations."[29]

Government Code section 3517.5 provides, "If agreement is reached between the Governor and the recognized employee organization, they shall jointly prepare a written memorandum of such understanding which shall be presented, when appropriate, to the Legislature for determination." Government Code section 3517.6 explains that the provisions of a MOU are controlling in cases of conflict with certain statutory provisions, including section 19859 of the Government Code.[30]

We note that Government Code section 3517.8 sets forth an express exemption from the APA as follows:

> "The Department of Personnel Administration may adopt or amend regulations to implement employee benefits for those state officers

and employees excluded from, or not otherwise subject to, collective bargaining."

These regulations[31] shall not be subject to the review and approval of the Office of Administrative Law pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2). These regulations shall become effective immediately upon filing with the Secretary of State." [Emphasis added.]

This express exemption does not apply to the issues presented in this Determination since (1) the requester is not one of the employees excluded from, or not otherwise subject to, collective bargaining, and (2) the rule at issue is alleged to apply to all state employees.

We are aware of no specific statutory exemption which would permit the Department to issue rules regarding sick leave for employees covered by collective bargaining without complying with the APA.

MOU Provisions

Since the requester is in Bargaining Unit 1, we will consider the effect of the MOU for Bargaining Unit 1 on the challenged rule. However, it is also important to note that the request could have been submitted by anyone (see section 122 of Title 1 of the CCR), including someone in the private sector: the analysis of the challenged rule would be the same.

Section 8.2, subsection (a), of the MOU for Bargaining Unit 1, which covers the period from May 18, 1989, through June 30, 1991, defines sick leave as the "necessary absence from duty of an employee because of:

"(1) Illness or injury, including illness or injury relating to pregnancy.
(2) Exposure to a contagious disease which is determined by a physician to require absence from work.
(3) Dental, eye, and other physical or medical examination or treatment by a licensed practitioner.
(4) Absence from duty for attendance upon the employee's ill or injured mother, father, husband, wife, son, daughter, brother, or sister, or any person residing in the immediate household. Such absence shall be limited to five (5) work days per occurrence

or, in extraordinary situations, to the time necessary for care until physician or other care can be arranged."

Subsection (f) of section 8.2 of the MOU covering Bargaining Unit 1[32] provides:

"The department head or designee shall approve sick leave only after having ascertained that the absence is for an authorized reason and may require the employee to submit substantiating evidence including, but not limited to, a physician's certificate. If the department head or designee does not consider the evidence adequate, the request for sick leave shall be disapproved." [Emphasis added.]

Section 5.6 of the MOU for Bargaining Unit 1 is entitled "Supersession," and provides:

"The following enumerated Government Code Sections and all existing rules, regulations, standards, practices and policies which implement the enumerated Government Code Sections are hereby incorporated into this Agreement. However, if any other provision of this Agreement alters or is in conflict with any of the Government Code Sections enumerated below, the Agreement shall be controlling and supersede said Government Code Sections or parts thereof and any rule, regulation, standard, practice or policy implementing such provisions. The Government Code Sections listed below [Government Code sections 19824, 19839, 19888, 19829, 19832, 19834, 19835, 19836, 19837, 19856, 19863, 19991.4, 19859, 19863, 19863.1, 19864, 19991.4, 19850.4, 19850.5, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878] are cited in Section 3517.6 of the Ralph C. Dills Act." [Emphasis added.]

Government Code section 19859, which is quoted on pages 485 and 486 of this Determination, provides the Department with specific authority to adopt rules regarding sick leave substantiation. Neither the text of the above MOU provisions nor the pertinent statutory law contain the challenged rule.

Our examination of both the Dills Act and the pertinent MOU provisions indicate that APA requirements apply to the challenged rule. We defer our discussion of the

applicability of the APA to specific MOU provisions to a later section of this Determination.

SECOND, WE INQUIRE WHETHER THE CHALLENGED RULES ARE REGULATIONS" WITHIN THE MEANING OF THE KEY PROVISION OF GOVERNMENT CODE SECTION 11342.

In part, Government Code section 11342, subdivision (b), defines "regulation" as:

> ". . . every rule, regulation, order, or standard of general application or the amendment, supplement or revision of any such rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, . . ." [Emphasis added.]

Government Code section 11347.5, authorizing OAL to determine whether or not agency rules are "regulations," provides in part:

> "(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a [']regulation['] as defined in subdivision (b) of Section 11342, unless the guideline, criterion, bulletin, manual, instruction [or] . . . standard of general application . . . has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA] . . . ." [Emphasis added.]

In Grier v. Kizer,[33] the California Court of Appeal upheld OAL's two-part test as to whether a challenged agency rule is a "regulation" as defined in the key provision of Government Code section 11342, subdivision (b):

> First, are the challenged rules of the state agency either
>
> - rules or standards of general application or
> - a modification or supplement to such rules?
>
> Second, have the challenged rules been adopted by the agency to either
>
> - implement, interpret, or make specific the law enforced or administered by the agency or
> - govern the agency's procedure?

If an uncodified rule fails to satisfy either of the above two parts of the test, we must conclude that it is not a "regulation" and not subject to the APA. In applying this two-part test, however, we mindful of the admonition of the Grier court:

> ". . . because the Legislature adopted the APA to give interested persons the opportunity to provide input on proposed regulatory action (Armistead, supra, 22 Cal.3d at p. 204, 149 Cal. Rptr. 1, 583 P.2d 744), we are of the view that any doubt as to the applicability of the APA's requirements should be resolved in favor of the APA." [Emphasis added.][34]

In order to analyze the challenged rule in this Determination, we will divide it into two parts. As the requester states:

> "I would like a determination made as to whether the Department of Personnel Administration violates Government Code section 11347.5 by requiring State Employees to divulge the nature of an illness on their monthly leave reports.
>
> . . .
>
> ". . . it is the requirement of section 8 on this particular form that I am questioning. I am questioning two elements of this section, I am questioning the stated request of section 8, 'Reason for Absence,' and the unwritten rule that I be specific regarding the nature of my illness."

The first part of the challenged rule is the requirement that employees provide the "Reason for Absence" in blank 8 of the Form 634. The second part of the challenged rule is the requirement that employees provide the specific nature of their illnesses in blank 8 of the Form 634. It is important to emphasize that our focus is on the rule as alleged. It is not our function to make factual determinations regarding the existence and scope of the alleged rule, but only to determine whether the rule as alleged violates Government Code section 11347.5.

1A. Part One - Does the Requirement of Blank 8 of the Form 634 that Employees provide the "Reason for Absence" Constitute A Rule or Standard of General Application?

For an agency rule or standard to be "of general application" within the meaning of the APA, it need not

apply to all citizens of the state. It is sufficient if the rule applies to all members of a class, kind or order.[35] The first part of the challenged rule is a standard of general application because it applies to all state employees.

In its Response,[36] the Department states:

> "The 'reason for absence' provision in the Form 634 is not a binding standard or guideline.[37] In fact, many State agencies use forms that they develop rather than the standard form. No agency is actually required[38] to use the standard form. (For example, Exhibit C appended to CSEA's comment mentions EDD FORM DE 7013.) Agencies are free to grant sick leave so long as they are satisfied that sick leave is being properly used. The determination of what satisfies an agency is left to that agency. Rather than a rule, supervisors often determine on a case--by-case basis what is acceptable."

We do not need to resolve the factual disputes the Department raises. Furthermore, it is important to note that the first line in the upper left hand corner of the Form 634 (see Exhibit A attached to this Determination) has the words "State of California." This suggests that Form 634 is the form to be used by state agencies in general.

Also, it is significant that Form 634 is a "standard" state form. State Administrative Manual ("SAM") section 1623 defines "standard state form" as a "form developed for use by all agencies and usually used to carry out administrative functions."[39] (Emphasis added.) SAM section 1632.5 provides in part, "Standard forms shall be used by all agencies, in lieu of creating agency forms." (Emphasis added.)[40] The requirement that employees provide the "Reason for Absence" in blank 8 of the Form 634 applies to all members of a class. Therefore, the answer to this inquiry is "yes." The first part of the challenged rule is a standard of general application.

1B. Part Two - Does the Requirement of Blank 8 of the Form 634 that Employees Provide the "Reason for Absence" Constitute A Rule Which Interprets, Implements, or Makes Specific the Law Enforced or Administered by the Agency or Which Governs the Agency's Procedure?

The answer to this inquiry is "yes." Government Code section 19815.4, subdivision (d) provides the Department with general rulemaking authority.

Government Code sections 19859 and 19860 give the Department authority to adopt rules for the submission of satisfactory proof of the necessity of sick leave and for the regulation and method of accumulation of sick leave. Title 2, CCR, section 599.750 provides:

> "Sick leave shall be certified by the appointing power upon forms prescribed by the Director of the Department of Personnel Administration." [Emphasis added.]

It appears to both state departments and employees that blank 8 of the Form 634 must be completed. The requirement of blank 8 on the Form 634 interprets and implements both the Government Code section 19859 and section 599.750.

2A. Part One - Does the Requirement that Employees List the Specific Nature of their Illnesses in Blank 8 of the Form 634 Constitute a Rule or Standard of General Application?

The second part of the challenged rule is a standard of general application since it is alleged to apply to state employees, and they are clearly members of a class. In its Response to this issue, the Department states that this information "is not required by the language and Form 634 itself, and departmental practices, as well as practices within a department vary."[41] As previously stated, we need not resolve factual issues. The rule has been properly alleged to exist. It is a standard of general application because the rule as alleged requires that state employees complete blank 8 of the Form 634.[42] Therefore, part one of the challenged rule is a standard of general application.

2B. Part Two - Does the Requirement that Employees List the Specific Nature of their Illnesses in Blank 8 of the Form 634 Establish a Rule Which Interprets, Implements, or Makes Specific the Law Enforced or Administered by the Agency or Which Governs the Agency's Procedure?

In its Response, the Department states that the challenged rule merely applies existing legal requirements to a specific situation.[43] However, the "existing legal requirements"[44] do not contain the challenged rule. Government Code section 19859 provides that each employee is entitled to sick leave with pay on the submission of satisfactory proof of the necessity for the leave, as provided by rule of the

Department. Requiring the specific nature of the illness on the Form 634 is an interpretation of the "satisfactory proof" requirement. Requiring the specific nature of the illness on the Form 634 also implements and interprets Government Code section 19860, which provides that the Department may provide by rule for the regulation and accumulation of sick leave credits. Section 599.749 of Title 2 of the CCR provides:

> "The appointing power shall approve sick leave only after having ascertained that the absence was for an authorized reason and may require the employee to submit substantiating evidence, including, but not limited to, a physician's certificate. If the appointing power does not consider the evidence adequate, the request for sick leave shall be disapproved." [Emphasis added.]

Although the Department in its Response states, "Employees must submit satisfactory proof to the appointing power that the requested leave fits within the definition of sick leave,"[45] the emphasized portion of section 599.749 of the CCR uses permissive language in connection with the sick leave substantiation requirement. The challenged rule implements and interprets section 599.749 since the challenged rule adds in a requirement for the information required as "substantiating evidence." Nothing in the pertinent statutory law or regulatory law contains the requirement that the employees must reveal the specific nature of their illnesses in blank 8 of the Form 634.

WE THUS CONCLUDE THAT THE REQUIREMENT OF BLANK 8 OF THE FORM 634 THAT EMPLOYEES PROVIDE THE "REASON FOR ABSENCE" AND THE REQUIREMENT THAT EMPLOYEES LIST THE SPECIFIC NATURE OF THEIR ILLNESS IN BLANK 8 OF THE FORM 634 ARE "REGULATIONS" AS DEFINED IN THE KEY PROVISION OF GOVERNMENT CODE SECTION 11342, SUBDIVISION (b).

THIRD, WE INQUIRE WHETHER THE CHALLENGED RULE FALLS WITHIN ANY ESTABLISHED GENERAL EXCEPTION TO APA REQUIREMENTS.

Generally, all "regulations" issued by state agencies are required to be adopted pursuant to the APA, unless they have been expressly exempted by statute from the application of the APA.[46] Rules concerning certain activities of state agencies--for instance, "internal management"--are not subject to the procedural requirements of the APA.[47]

We will discuss the following APA exception topics: (1) internal management, (2) forms, (3) contractual

provisions previously agreed to by the parties, and (4) the implied exemption argument.

Internal Management Exception

Government Code section 11342, subdivision (b), contains the following specific exception to APA requirements:

> "'Regulation' means every rule, regulation, order, or standard of general application or . . ., except one which relates only to the 'internal management' of the state agency." [Emphasis added.]

The "internal management" exception has been judicially determined to be narrow in scope.[48] A brief review of relevant case law demonstrates that the "internal management" exception applies if the "regulation" under review (1) affects only the employees of the issuing agency[49,50] and (2) does not address a matter of serious consequence involving an important public interest.[51,52] In Armistead v. State Personnel Board, the court determined that a provision of a State Personnel Manual concerning the termination of employment was a "matter of import to all civil service employees."[53] The rules regarding sick leave usage are also matters of import to all civil service employees.

Forms Exception

If a form or form instruction contains "regulations" within the meaning of Government Code section 11343, subdivision (b), those "regulations" must be adopted pursuant to the APA. In other words, if a form contains uniform, substantive rules which were adopted in order to implement a statute, those rules must be promulgated in compliance with the APA.[54,55] According to the California Court of Appeal for the First District, the " . . . statutory exemption relate[es] to operational forms."[56] (Emphasis added.) There is no requirement that an agency adopt a form as a regulation when that form simply provides an operationally convenient place in which applicants for licenses can, for instance, write down information which existing provisions of law already require them to furnish to the licensing agency. By contrast, if an agency form goes beyond existing legal requirements, if that form contains uniform, substantive provisions which in essence make new law, then, under Government Code section 11342, subdivision (b), a formal regulation is

"needed to implement the law under which the form is issued."

OAL is not examining the Form 634 to determine whether or not the entire form is a "regulation." Our focus is whether blank 8 of the form is a "regulation." The exception provided in Government Code section 11342, subdivision (b), does not apply to the challenged rule since both the requirement concerning what needs to be in blank 8 of the Form 634 and the instructions for filling out blank 8 contain substantive requirements which are not part of existing law. The Department incorrectly asserts that requiring an employee to give a reason for his/her absence is in the nature of an instruction relating to the use of a form.[57] This policy clearly goes beyond furnishing information already required by existing law. On the back of the Form 634, the instructions for blank 8 provide:

> "Reason for Absence or Extra Hours Worked- Employee must indicate reason for sick leave absences, including relationship of family member when reporting family sick leave.
>
> Note: This item also can be used for reporting reasons for overtime hours worked or for unpaid absences." [Emphasis added.]

These instructions also contain substantive requirements, as discussed above.

None of the recognized exceptions to the procedural requirements of the APA (see note 47) apply to the challenged rule that requires employees to state the "Reason for Absence" in blank 8 of the Form 634.

Contractual Provisions Previously Agreed to by the Parties

The Department cites a number of cases[58] in support of its position that contractual provisions previously agreed to by the parties do not violate the APA. A review of the cases cited will establish that the Department has not provided authority for its conclusion as applied to the facts of this Determination. In City of San Joaquin v. State Board of Equalization, the court considered the effect of a provision in a contract between the State Board of Equalization and the City of San Joaquin.[59] In the suit, the City of San Joaquin was complaining about a specific provision in the contract.[60] The facts of that case distinguish it from the issue in this Determination since there is no MOU provision that contains the challenged rules. We do not need to

consider the applicability of the APA to a specific contract provision since, as we have already set forth, there is no specific MOU provision that contains the challenged rule.

In Roth v. Department of Veterans Affairs[61] the court addressed the validity of the Department's charging late fees to homebuyers when the contracts for the purchases of farms and homes did not specifically provide for a late charge. The trial court entered judgment in favor of the Department. The Court of Appeal reversed the lower court judgment and noted that the Department's practice was a rule of general application that needed to be adopted pursuant to the APA.[62] This case does not support the Department's position.

Although the Department attempts to distinguish International Association of Fire Fighters v. City of San Leandro[63] from the issues presented in this Determination, the court in Fire Fighters included as a basis for its decision a holding that is worthy of our consideration. In evaluating the legality of a general order of the Fire Department of San Leandro that required fire department personnel to reside within 40 miles of the fire station, the court noted that it properly considered the constitutionality of the order, even though the parties in the suit had negotiated and agreed to the residency requirement.[64] Although the constitutionality of the challenged rules is not before OAL in this Determination, it is worthwhile to note that a collective bargaining agreement is not above constitutional review.[65]

The Department cites Phillips v. California State Personnel Board[66] simply for the proposition that unions may bargain statutory rights. This is not a complete statement of the court's position, and the entire Phillips case merits a closer look. In Phillips, a public employee was discharged pursuant to a provision of a collective bargaining agreement executed between the Board of Trustees for California State University and the labor union representing the appellant.

In Phillips, the pertinent MOU provision provided that an employee's absence of five consecutive workdays without securing authorized leave was considered an automatic resignation. The MOU, by its own terms, stated that it superseded Education Code section 89541, which would otherwise have been the controlling authority over the appellant's termination. This Education Code section established a process by which an employee could request reinstatement and also

provided that the MOU would control if any MOU provisions conflicted with the statute. These facts present a strong similarity to the facts of the matter currently under review; the MOU contains a supersession section, and sections of the Government Code also provide that the MOU provisions will override the statute.

The court in Phillips did note that "parties to a collective bargaining agreement may supplant statutory procedures and remedies whereby covered public employees may challenge disciplinary action taken against them and may substitute alternate methods therefor. (Citations omitted.)"[67] The court also stated, however, that collective bargaining agreements cannot waive an employee's right to due process.[68] The Phillips case is instructive for the issues addressed in this Determination: insofar as the challenged rules touch on the fundamental right to privacy, the supersession provision in the MOU and the statutes cannot give automatic sanction to any departmental "policy or practice." However, as noted above, this Determination need not resolve the constitutional issues that the challenged rules may present. (See note 65.)

The Department has not successfully argued that the challenged rules are exempt from the APA because they are "contractual provisions previously agreed to by the parties." The Department has not established that the challenged rule fits within specific MOU provisions. The only other way the challenged rule could fit within the "contractual provisions previously agreed to by the parties" analysis is if the challenged rule falls within that portion of the "Supersession" clause of the MOU that purports to indiscriminately incorporate by reference all "practices and policies" which implement specified Government Code provisions. We will examine the effect of the "Supersession" clause on the challenged rule in the following portion of this Determination.

The Implied Exemption Argument

In its Response, the Department recognizes that there is no express provision exempting the agreements made under the Dills Act from the requirements of the APA.[69] The Department takes the position that MOU's negotiated pursuant to the Dills Act are impliedly exempt from the APA. A short review of the pertinent law on the exemption issue is necessary to frame the issues.

In 1947, the Legislature enacted the following APA provision:

> "It is the purpose of this article to establish basic minimum procedural requirements for the adoption, amendment or repeal of administrative regulations. Except as provided in section 11346.1, the provisions of this article are applicable to the exercise of any quasi-legislative power conferred by any statute heretofore or hereafter enacted, but nothing in this article repeals or diminishes additional requirements imposed by any such statute. The provisions of this article shall not be superseded or modified by any subsequent legislation except to the extent that such legislation shall do so expressly." [Emphasis added; Government Code section 11346.]

According to settled principles of statutory interpretation, we are to look to the ordinary meaning of the words to determine what the Legislature intended. According to the American Heritage Dictionary,[70] "express" means "definitely and explicitly stated." "Expressly" means "in an express or definite manner; explicitly." In a usage note under the word "explicit," the American Heritage Dictionary states:

> "Explicit and express both apply to something that is CLEARLY STATED RATHER THAN IMPLIED. Explicit applies more particularly to that which is carefully spelled out: explicit instructions. Express applies particularly to a clear expression of intention or will: an express promise or an express prohibition." [Underlined emphasis in original; capitalized emphasis added.]

According to Black's Legal Dictionary, "express" means:

> "Clear; definite; explicit; plain; direct; unmistakable; not dubious or ambiguous. . . . Made known distinctly and explicitly, and not left to inference. . . . The word is usually contrasted with 'implied.'" [Emphasis added.][71]

As explained above, there is no express exemption from the APA for the challenged rules in this Determination.

OAL has consistently read the APA to disallow implied exemptions except in the case of irreconcilable statutory conflicts. In 1986 OAL Determination No. 8 [Docket No. 86-004] October 15, 1986, OAL rejected an argument that a statute concerning pesticide health effects studies impliedly exempted certain directives of the Department of Food and Agriculture. Government

Code section 11347.5 requires OAL to "make its determination known to the . . . Legislature." Therefore, the Legislature has been fully informed of OAL's construction of Government Code section 11347.5, and the Legislature has not revised the APA to counteract OAL's interpretation.

Applying section 11346 to the challenged rule presented in this Determination, it would appear that the Department needs to adopt the challenged rule pursuant to the APA. Both Government Code sections 19859 and 19860 expressly give the Department authority to adopt rules in this area.

However, before our analysis is complete we need to examine in detail the Department's implied exemption argument. The Department contends that MOU provisions may supersede express statutory provisions because the statutes themselves permit this.

Government Code section 3517.6 provides in part:

> In any case where the provisions of Section 70031 of the Education Code, or subdivision (h) of Section 3513, or Section 14876, . . . 19859 [of the Government Code; see note 30 and pages 485-486 of this Determination]. . . are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action. . . ." [Emphasis added.]

Government Code section 3517.5 provides:

> "If agreement is reached between the Governor and the recognized employee organization, they shall jointly prepare a written memorandum of such understanding which shall be presented, when appropriate, to the Legislature for determination."

Section 5.6, the Supersession Clause of the MOU for Bargaining Unit 1 provides in part:

> "However, if any other provision of this Agreement alters or is in conflict with any of the Government Code Sections enumerated below [which include Government Code section 19859], the Agreement shall be controlling and supersede said Government Code Sections or parts thereof and any rule, regulation, standard, practice or policy implementing such provisions. . . ." [Emphasis added.]

The "supersession" language in the above statutory provisions and the MOU does not resolve the issues presented in this Determination since there is no specific provision in the MOU that contains either the first or the second part of the challenged rule.

In arguing the implied exemption position, the Department states in its Response, "It is quite another matter, however, to [have] concluded that binding collective bargaining agreements authorized by the Dills Act are also subject to the APA."[72] (Emphasis, including the word "have" added.) As we will establish below, the Department has improperly stated the issue, and it is far beyond the proper scope of our inquiry to state whether or not collective bargaining agreements are exempt from the provisions of the APA.

We point out that neither the entire collective bargaining agreement nor a specific provision in the collective bargaining agreement is the challenged rule in this Determination. The requester did not challenge the MOU as a document. Therefore, we do not need to analyze the merits of this argument, other than to note that nowhere in the Department's Response does it try to reconcile Government Code section 19815.4, ["The Director shall . . . adopt, amend or repeal rules, regulations . . . which are consistent with the law], or Government Code sections 19859 and 19860, the statutes that specifically discuss rules for sick leave, with the APA. If the Department had framed the issue correctly, it would have needed to consider how these Government Code sections could be reconciled with the Dills Act and the APA. (See footnotes 77 and 78.)

We would restate the issue at this stage in the analysis as follows: whether or not the challenged rule requiring the employee to state the specific nature of the illness on the Form 634 may be found within one or more of the provisions of the MOU. Again, whether or not these agreements are exempt from the APA is not the first level of analysis. Since the challenged rule is not an express MOU provision, the challenged rule is part of the MOU only if it falls within section 5.6 of the MOU, which provides:

> "The following enumerated Government Code Sections and all existing rules, regulations, standards, practices and policies which implement the enumerated Government Code Sections are hereby incorporated into this Agreement. However, if any other provision of this Agreement alters or is in conflict with any of the Government Code Sections

> enumerated below, the Agreement shall be controlling and supersede said Government Code Sections or parts thereof and any rule, regulation, standard, practice or policy implementing such provisions." [Emphasis added.]

The Department argues in its Response[73] that requiring the specific nature of the illness on the Form 634 is not a rule or standard of general application. The Department also states in its Response:

> ". . . by incorporating [Government Code] section 19859 and all policies and practices associated with it, EVEN IF THOSE POLICIES AND PRACTICES ARE NOT CONSISTENT, CSEA HAS AGREED THAT THE STATE MAY REQUIRE EMPLOYEES TO DISCLOSE THE NATURE OF THEIR ILLNESS."[74] [Underlining and capitalized emphasis after "it," with the exception of the word "CSEA," added.]

The Department's position does not seem fully persuasive in light of this request for determination and the fact that the challenged rule has been the subject of many employee grievances. Furthermore, CSEA, which submitted a written comment, strongly disputes the position the Department assigns to it. The Department's apparent reasoning that the challenged rule fits within the "all policies and practices" portion of section 5.6 of the MOU is a question of contract interpretation in the labor law context. Also, the Department cites no authority for its above quoted conclusion. Government Code section 3512 provides in part:

> "It is the purpose of this chapter to promote full communication between the state and its employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between the state and public employee organizations."

The Department's enforcement of "policies or practices" not within specific MOU provisions that are also clearly the subject of many employee grievances would not seem to satisfy the purpose of the above provisions in the Dills Act. The Department has provided no legislative intent material indicating that the Legislature's ratification of MOUs [see Government Code section 3517.5] is intended to include unwritten policies and practices that are in conflict with the express provisions of the MOUs. To interpret the Dills

Act as the Department does would open the door for any number of unwritten personnel practices and policies that could significantly undermine the MOUs.

Although case law on this subject is sparse, it is worthwhile to note that in the Association of California State Attorneys and Administrative Law Judges (ACSA) v. State of California, Department of Personnel Administration (DPA) and State Personnel Board (SPB)[75] the trial court ruled that an attorney staffing ratio contained in an MOU was invalid because the state had failed to comply with the APA, even though the state in its brief made arguments about the disharmony between the APA and the Dills Act.[76] It is an open question on the appellate level whether a specific MOU provision is exempt from the APA, and we do not need to reach this issue since the challenged rule is not a specific provision.

We do not need to consider whether an MOU negotiated pursuant to the Dills Act is exempt from the APA because it cannot be harmonized pursuant to the pertinent case law[77] or whether the Dills Act has repealed by implication the express requirement contained in Government Code section 11346.[78] We reach this conclusion because the challenged rule is neither the MOU nor a specific provision in the MOU.

SUMMARY

We will recap the fundamental points we are making in this Determination. The Department has rulemaking statutes that clearly require it to adopt rules regarding sick leave usage. The request for determination does not attack the entire MOU negotiated pursuant to the Dills Act. Instead, the challenged rule concerns a policy that is not an express MOU provision. We cannot agree that the "Supersession" clause of the MOU sanctions the challenged rule. Although provisions in the Dills Act provide that the Legislature ratifies the MOUs, it is stretching too far to state that this ratification is intended to embrace an unarticulated policy such as the challenged rule. As stated by the court in Grier, "any doubt as to the applicability of the APA's requirements should be resolved in favor of the APA." [See footnote 32]

WHAT CONSEQUENCES WILL FLOW FROM OAL'S DECISION ON THE IMPLIED EXEMPTION CLAIM?

The Department has strongly stated its concerns that collective bargaining agreements "would be completely eviscerated if both the employer and employee organization were required to present their joint agreements to OAL, an agency of the executive branch, for implementation as regulations."[79] However, this statement greatly expands the proper scope of OAL's inquiry in this Determination. We have not determined whether or not the APA applies to MOUs in general, and we have not decided whether or not the APA applies to a specific provision of an MOU. We have determined only that the challenged rule, which is not a specific MOU provision, is not expressly or impliedly exempt from the APA.

III. CONCLUSION

For the reasons set forth above, OAL finds that:

(1) the Department's rules are generally required[80] to be adopted pursuant to the APA;

(2) requiring the "Reason for Absence" in blank 8 of the Form 634 and requiring that employees list the specific nature of their illness in blank 8 of the Form 634 are "regulations" as defined in the key provision of Government Code section 11342, subdivision (b);

(3) the two parts of the challenged rule are not exempt from the requirements of the APA; and therefore,

(4) the two parts of the challenged rule violate Government Code section 11347.5, subdivision (a).

DATE: December 18, 1990

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1. This Request for Determination was filed by Peggy Horton-Paine, P.O. Box 221516, Sacramento, CA 95822. The Department of Personnel Administration was represented by David J. Tirapelle, Director, 1515 S Street, North Building, Suite 400, P.O. Box 944234, Sacramento, CA 94244-2340, (916) 322-5193.

To facilitate the indexing and compilation of determinations, OAL began, as of January 1, 1989, assigning consecutive page numbers to all determinations issued within each calendar year, e.g., the first page of this determination, as filed with the Secretary of State and as distributed in typewritten format by OAL, is "482" rather than "1." Different page numbers are necessarily assigned when each determination is later published in the California Regulatory Notice Register.

2. It is important to note at the outset that the policy is not contained in a specific Memorandum of Understanding provision.

3. The legal background of the regulatory determination process --including a survey of governing case law--is discussed at length in note 2 to 1986 OAL Determination No. 1 (Board of Chiropractic Examiners, April 9, 1986, Docket No. 85-001), California Administrative Notice Register 86, No. 16-Z, April 18, 1986, pp. B-14--B-16, typewritten version, notes pp. 1-4. See also Grier v. Kizer (1990) 219 Cal.App.3d 422, 268 Cal.Rptr. 244, 249-250, modified on other grounds, 219 Cal.App.3d 1151e, petition for review unanimously denied, June 21, 1990 (APA was enacted to establish basic minimum procedural requirements for the adoption, amendment or repeal of state administrative regulations).

In August 1989, a second survey of governing case law was published in 1989 OAL Determination No. 13 (Department of Rehabilitation, August 30, 1989, Docket No. 88-019), California Regulatory Notice Register 89, No. 37-Z, p. 2833, note 2. The second survey included (1) five cases decided after April 1986 and (2) seven pre-1986 cases discovered by OAL after April 1986. Persuasive authority was also provided in the form of nine opinions of the California Attorney General which addressed the question of whether certain material was subject to APA rulemaking requirements.

In November 1990, a third survey of governing case law was published in 1990 OAL Determination No. 12 (Department of Finance, November 2, 1990, Docket No. 89-019), California Regulatory Notice Register 90, No.46-Z, page 1693, note 2. The third survey included (1) five appellate court cases which were decided during 1989 and 1990, and (2) two California Attorney General opinions: one opinion issued

before the enactment of Government Code section 11347.5, and the other opinion issued thereafter.

Readers aware of additional judicial decisions concerning "underground regulations"--published or unpublished--are invited to furnish OAL's Regulatory Determinations Unit with a citation to the opinion and, if unpublished, a copy of the opinion. (Whenever a case is cited in a regulatory determination, the citation is reflected in the Determinations Index.) Readers are also encouraged to submit citations to Attorney General opinions addressing APA compliance issues.

4. Title 1, California Code of Regulations ("CCR") (formerly known as the "California Administrative Code"), subsection 121(a), provides:

> "'Determination' means a finding by OAL as to whether a state agency rule is a 'regulation,' as defined in Government Code section 11342(b), which is invalid and unenforceable unless
>
> (1) it has been adopted as a regulation and filed with the Secretary of State pursuant to the APA, or,
>
> (2) it has been exempted by statute from the requirements of the APA." [Emphasis added.]

See Grier v. Kizer (1990) 219 Cal.App.3d 422, 268 Cal.Rptr. 244, modified on other grounds, 219 Cal.App.3d 1151e, petition for review unanimously denied, June 21, 1990 (finding that Department of Health Services' audit method was invalid and unenforceable because it was an underground regulation which should be adopted pursuant to the APA); and Planned Parenthood Affiliates of California v. Swoap (1985) 173 Cal.App.3d 1187, 1195, n. 11, 219 Cal.Rptr. 664, 673, n. 11 (citing Gov. Code sec. 11347.5 in support of finding that uncodified agency rule which constituted a "regulation" under Gov. Code sec. 11342, subd. (b), yet had not been adopted pursuant to the APA, was "invalid").

5. In a recent case, the Second District Court of Appeal, Division Three, held that a Medi-Cal audit statistical extrapolation rule utilized by the Department of Health Services must be adopted pursuant to the APA. Grier v. Kizer (1990) 219 Cal.App.3d 422, 268 Cal.Rptr. 244. Prior to this court decision, OAL had been requested to determine whether or not this Medi-Cal audit rule met the definition of "regulation" as found in Government Code section 11342, subdivision (b), and therefore was required to be adopted pursuant to the APA. Pursuant to Government Code section 11347.5, OAL issued a determination concluding that the

audit rule did meet the definition of "regulation," and therefore was subject to APA requirements. 1987 OAL Determination No. 10 (Department of Health Services, Docket No. 86-016, August 6, 1987). The Grier court concurred with OAL's conclusion.

The Grier court stated that the

> "Review of [the trial court's] decision is a question of law for this court's independent determination, namely, whether the Department's use of an audit method based on probability sampling and statistical extrapolation constitutes a regulation within the meaning of section 11342, subdivision (b). [Citations.]" 219 Cal.App.3d at p.434, 268 Cal Rptr. at p. 251.

Concerning the treatment of 1987 OAL Determination No. 10, which was submitted to the court for consideration in the case, the court further found

> "While the issue ultimately is one of law for this court, 'the contemporaneous administrative construction of a statute by those charged with its enforcement and interpretation is entitled to great weight, and courts generally will not depart from such construction unless it is clearly erroneous or unauthorized. [Citations.]' [Citations.] [Par.] Because [Government Code] section 11347.5, subdivision (b), charges the OAL with interpreting whether an agency rule is a regulation as defined in [Government Code] section 11342, subdivision (b), we accord its determination due consideration." (Id.; emphasis added.)

The court also ruled that "the audit technique had not been duly adopted as a regulation pursuant to the APA, . . . [and therefore] deemed it to be an invalid and unenforceable 'underground' regulation," was "entitled to due deference." (Emphasis added.)

Other reasons for according "due deference" to OAL determinations are discussed in note 5 of 1990 OAL Determination No. 4 (Board of Registration for Professional Engineers and Land Surveyors, February 14, 1990, Docket No. 89-010), California Regulatory Notice Register 90, No. 10-Z, March 9, 1990, p. 384.

6. Note Concerning Comments and Responses

In general, in order to obtain full presentation of contrasting viewpoints, we encourage not only affected rulemaking agencies but also all interested parties to submit written comments on pending requests for regulatory

determination. (See Title 1, CCR, sections 124 and 125.) The comment submitted by the affected agency is referred to as the "Response." If the affected agency concludes that part or all of the challenged rule is in fact an "underground regulation," it would be helpful, if circumstances permit, for the agency to concede that point and to permit OAL to devote its resources to analysis of truly contested issues.

OAL received five public comments.

The Department of Personnel Administration's Response to the Request for Determination was received by OAL on July 11, 1990 and was considered in this proceeding.

7. If an uncodified agency rule is found to violate Government Code section 11347.5, subdivision (a), the rule in question may be validated by formal adoption "as a regulation" (Government Code section 11347.5, subd. (b)) or by incorporation in a statutory or constitutional provision. See also California Coastal Commission v. Quanta Investment Corporation (1980) 113 Cal.App.3d 579, 170 Cal.Rptr. 263 (appellate court authoritatively construed statute, validating challenged agency interpretation of statute.)

8. Pursuant to Title 1, CCR, section 127, this Determination shall become effective on the 30th day after filing with the Secretary of State. This Determination was filed with the Secretary of State on the date shown on the first page of this Determination.

9. We refer to the portion of the APA which concerns rulemaking by state agencies: Chapter 3.5 of Part 1 ("Office of Administrative Law") of Division 3 of Title 2 of the Government Code, sections 11340 through 11356.

The rulemaking portion of the APA and all OAL Title 1 regulations are both reprinted and indexed in the annual APA/OAL regulations booklet, which is available from OAL's Information Services Unit for $3.00 ($4.65 if mailed).

10. We are not drawing any conclusions about the applicability of the APA to specific Memorandum of Understanding provisions.

11. Government Code section 11347.5 provides:

> "(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction,

order, standard of general application, or other rule, which is a [']regulation['] as defined in subdivision (b) of Section 11342, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

"(b) If the office is notified of, or on its own, learns of the issuance, enforcement of, or use of, an agency guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule which has not been adopted as a regulation and filed with the Secretary of State pursuant to this chapter, the office may issue a determination as to whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, is a [']regulation['] as defined in subdivision (b) of Section 11342.

"(c) The office shall do all of the following:

1. File its determination upon issuance with the Secretary of State.

2. Make its determination known to the agency, the Governor, and the Legislature.

3. Publish a summary of its determination in the California Regulatory Notice Register within 15 days of the date of issuance.

4. Make its determination available to the public and the courts.

"(d) Any interested person may obtain judicial review of a given determination by filing a written petition requesting that the determination of the office be modified or set aside. A petition shall be filed with the court within 30 days of the date the determination is published.

"(e) A determination issued by the office pursuant to this section shall not be considered by a court, or by an administrative agency in an

adjudicatory proceeding if all of the following occurs:

1. The court or administrative agency proceeding involves the party that sought the determination from the office.

2. The proceeding began prior to the party's request for the office's determination.

3. At issue in the proceeding is the question of whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule which is the legal basis for the adjudicatory action is a [']regulation['] as defined in subdivision (b) of Section 11342."

[Emphasis added.]

12. Grier v. Kizer, (1990) 219 Cal.App.3d 422, 431, 268 Cal.Rptr. 244, 249.

13. Stats. 1981, c. 230, sec. 55, page 708.

14. The Legislative Counsel's Digest of Senate Bill No. 668 (1981-1982 Reg. Session) states:

"The Governor's Reorganization Plan No. 1 of 1981, which became effective on _____, 1981, created the Department of Personnel Administration to administer the nonmerit aspects of state employment for nonelected employees in the executive branch of government . . ."

"Various functions previously performed by the State Personnel Board are administered by the department, including, among others, salary determination, working hours, vacations, sick leave, absences, training performance reports, layoff, and grievances. . . ." [Emphasis added.]

15. Government Code section 19815.2.

16. Government Code section 19816.

17. Government Code section 3517.

18. Government Code section 3517.5.

19. We discuss the affected agency's rulemaking authority (see Gov. Code, sec. 11349, subd. (b)) in the context of reviewing a Request for Determination for the purposes of exploring the context of the dispute and of attempting to ascertain whether or not the agency's rulemaking statute expressly requires APA compliance. If the affected agency should later elect to submit for OAL review a regulation proposed for inclusion in the California Code of Regulations, OAL will, pursuant to Government Code section 11349.1, subdivision (a), review the proposed regulation in light of the APA's procedural and substantive requirements.

The APA requires all proposed regulations to meet the six substantive standards of Necessity, Authority, Clarity, Consistency, Reference, and Nonduplication. OAL does not review alleged "underground regulations" to determine whether or not they meet the six substantive standards applicable to regulations proposed for formal adoption.

The question of whether the challenged rule would pass muster under the six substantive standards need not be decided until such a regulatory filing is submitted to us under Government Code section 11349.1, subdivision (a). At that time, the filing will be carefully reviewed to ensure that it fully complies with all applicable legal requirements.

Comments from the public are very helpful to us in our review of proposed regulations. We encourage any person who detects any sort of legal deficiency in a proposed regulation to file comments with the rulemaking agency during the 45-day public comment period. (Only persons who have formally requested notice of proposed regulatory actions from a specific rulemaking agency will be mailed copies of that specific agency's rulemaking notices.) Such public comments may lead the rulemaking agency to modify the proposed regulation.

If review of a duly-filed public comment leads us to conclude that a regulation submitted to OAL does not in fact satisfy an APA requirement, OAL will disapprove the regulation. (Gov. Code, sec. 11349.1.)

20. In considering the meaning of the phrase "general policies," we note the rule from Government Code section 11346 that APA exemptions must be "express." Furthermore, applying the well established rules of statutory construction to harmonize all provisions of a statute where possible, it would appear illogical for the Legislature to have included a phrase signifying an APA exemption after the "adopt, amend or repeal rules,

regulations" language which clearly refers to APA requirements.

21. Sections 599.745 and 599.745.1 set forth, respectively, the definitions of Represented Employees and Nonrepresented Employees. Section 599.746 explains how sick leave accrues for full-time employees and section 599.747 explains how sick leave accrues for less than full-time employees. Section 599.748 concerns the application of sick leave credit for prior service under civil service or exempt appointment.

22. CSEA is a public sector labor union representing 9 bargaining units (units 1, 3, 4, 11, 14, 15, 17, 20 and 21) within the California State Civil Service comprised of approximately 70,000 employees.

23. California Regulatory Notice Register 90, No. 21-Z, May 25, 1990, p. 809.

24. The Arbitrator, pursuant to his authority as set forth in the MOU for Bargaining Unit 4, made a decision interpreting the MOU based on the facts of a particular case, which involved the sick leave/right to privacy grievance of Connie Salondaka, Grievant, identified as DPA No. 87-04-0011. The first issue, as framed by the arbitrator, was whether EDD violated MOU provisions when it required employees in specified circumstances to disclose, either directly or through their physician, the general nature of their illness as part of the substantiating evidence for sick leave approval. The second issue was whether EDD's discretion to determine appropriate substantiating evidence of an authorized reason for sick leave is unlimited. The Arbitrator's award held that EDD did not violate the pertinent MOU provisions in these particular circumstances and that EDD's discretion to determine the appropriate substantiating evidence for sick leave is not unlimited.

It is interesting to note that in the portion of the Arbitrator's Opinion and Award which contains the position of the Employment Development Department at page 14, lines 11-14, states:

> "The Union does not dispute the fact that prior to the advent of collective bargaining and after negotiation of the initial collective bargaining agreement, the State has had a uniform practice of ascertaining the 'nature of illness' prior to approving sick leave pay. . . ."

At page 14, lines 21-23, the Employment Development Department states:

> "Even if technically not a 'past practice' because of administrative deviations from time to time, the State's consistent policy is merged into the Agreement pursuant to Article 5.6."

25. See Faulkner v. California Toll Bridge Authority (1953) 40 Cal.2d 317, 324 (point 1); Winzler & Kelly v. Department of Industrial Relations (1981) 121 Cal.App.3d 120, 174 Cal.Rptr. 744 (points 1 and 2); and cases cited in note 2 of 1986 OAL Determination No. 1. A complete reference to this earlier Determination may be found in note 2 to today's Determination.

26. Government Code section 11342, subdivision (a). See Government Code sections 11343, 11346 and 11347.5. See also Auto and Trailer Parks, 27 Ops.Cal.Atty.Gen. 56, 59 (1956). For a complete discussion of the rationale for the "APA applies to all agencies" principle, see 1989 OAL Determination No. 4 (San Francisco Regional Water Quality Control Board and the State Water Resources Control Board, March 29, 1989, Docket No. 88-006), California Regulatory Notice Register 89, No. 16-Z, April 21, 1989, pp. 1026, 1051-1062; typewritten version, pp. 117-128.

27. See Winzler & Kelly v. Department of Industrial Relations (1981) 121 Cal.App.3d 120, 126-128, 174 Cal.Rptr. 744, 746-747 (unless "expressly" or "specifically" exempted, all state agencies not in legislative or judicial branch must comply with rulemaking part of APA when engaged in quasi-legislative activities); Poschman v. Dumke (1973) 31 Cal.App.3d 932, 943, 107 Cal.Rptr. 596, 603.

28. We are drawing no conclusions as to whether APA rulemaking requirements apply generally to the Dills Act.

29. Government Code section 3512.

30. Although Government Code section 3517.6 does not make explicitly clear that sections 19859 and 19860 are references to the Government Code, it appears that this must be so, based on a reading of the language of the statute.

31. Section 599.745.1 of the CCR is a sick leave regulation adopted pursuant to Government Code section 3517.8.

32. The Department states in its Response that Peggy Horton-Paine is likely to be either in Bargaining Unit 1 or Bargaining Unit 4. The MOU for Bargaining Unit 4 for the period covering August 31, 1988 through June 30, 1991, has the identical language quoted from section 5.6 of the Unit 1 MOU with the exception of the word "Contract" in place of the word "Agreement."

33. (1990) 219 Cal.App.3d 422, 434, 268 Cal.Rptr. 244, 251.

34. (1990) 219 Cal.App.3d 422, 438, 268 Cal.Rptr. 244, 253.

35. Roth v. Department of Veteran Affairs (1980) 110 Cal.App.3d 622, 167 Cal.Rptr. 552; California State Employees' Association v. State of California (1990) 222 Cal.App.3d 491, 271 Cal.Rptr. 734, petition for review filed September 1, 1990. See Faulkner v. California Toll Bridge Authority (1953) 40 Cal.2d 317, 323-324 (standard of general application applies to all members of any open class)."

36. Department Response. page 4.

37. In 1986 OAL Determination No. 6, OAL found that provisions in a study issued by the San Francisco Bay Conservation and Development Commission ("Commission") were "regulations," even though they contained advisory language and the Commission characterized the provisions as not binding. Whether or not a challenged rule is regulatory in nature depends upon the nature of the effect and the impact on the public--not the agency's characterization of the challenged rule.

    Therefore, the Department's characterization of the "reason for absence" provision as not a binding standard does not mean that it is not a rule of general application.

38. State Administrative Manual ("SAM") section 1623 defines "standard state form" as "A form developed for use by all agencies and usually used to carry out administrative functions."

    SAM section 1632.5 provides in part, "Standard forms shall be used by all agencies, in lieu of creating agency forms." [Emphasis added.]

39. The question of whether the SAM provisions violate Government Code section 11347.5 is not before us, and we express no opinion regarding this matter.

40. The Department does not provide specific examples (other than the Employment Development Form) of agencies that use other forms for monthly absence reports.

41. Department Response, page 2.

42. Exhibits A, B, and C to CSEA's comments demonstrate that other agencies have similar, if not identical requirements. Exhibits A, B and C to CSEA's public comment are portions of administrative manuals from other state departments, specifically, the Department of Aging, the Department of Parks and Recreation and the Employment Development Department. Provisions of the Department of Aging's administrative manual, Exhibit A to CSEA's comment, require employees to provide the nature of their illness or injury on the absence report when requesting sick leave for an absence of two days or less. Provisions of the Department of Parks and Recreation's administrative manual, Exhibit B to CSEA's comment, require that employees must advise their supervisors of the specific nature of their illness when unable to report to work because of an illness. Provisions of the Employment Development Department's administrative manual, Exhibit C to CSEA's comment, require that all employees supply information on the Absent Request [DE 7013] including the nature of their illness or injury.

    The Department in its Response states that exhibits D, E, F, G, H, I, J and L to CSEA's comment all relate to specific employees and therefore do not constitute a rule of general application. However, the Department does not make this statement concerning exhibits A, B, and C, and therefore it is undisputed that these exhibits are portions of the administrative manuals noted above.

43. Department Response, page 4.

44. See Government Code sections 19815.4, 19859, 19860 and Title 2, CCR, sections 599.745 through 599.751.

45. Department Response, page 4.

46. Government Code section 11346.

47. The following provisions of law may permit rulemaking agencies to avoid the APA's requirements under some circumstances:

    a. Rules relating <u>only</u> to the internal manage-

ment of the state agency. (Gov. Code, sec. 11342, subd. (b).)

b. Forms prescribed by a state agency or any instructions relating to the use of the form, except where a regulation is required to implement the law under which the form is issued. (Gov. Code, sec. 11342, subd. (b).)

c. Rules that "[establish] or [fix] rates, prices, or tariffs." (Gov. Code, sec. 11343, subd. (a)(1).)

d. Rules directed to a specifically named person or group of persons and which do not apply generally throughout the state. (Gov. Code, sec. 11343, subd. (a)(3).)

e. Legal rulings of counsel issued by the Franchise Tax Board or the State Board of Equalization. (Gov. Code, sec. 11342, subd. (b).)

f. There is limited authority for the proposition that contractual provisions previously agreed to by the complaining party may be exempt from the APA. City of San Joaquin v. State Board of Equalization (1970) 9 Cal.App.3d 365, 376, 88 Cal.Rptr. 12, 20 (sales tax allocation method was part of a contract which plaintiff had signed without protest); see Roth v. Department of Veterans Affairs (1980) 110 Cal.App.3d 622, 167 Cal.Rptr. 552 (dictum); Nadler v. California Veterans Board (1984) 152 Cal.App.3d 707, 719, 199 Cal.Rptr. 546, 553 (same); but see Government Code section 11346 (no provision for non-statutory exceptions to APA requirements); see Del Mar Canning Co. v. Payne (1946) 29 Cal.2d 380, 384 (permittee's agreement to abide by the rules in application may be assumed to have been forced on him by agency as a condition required of all applicants for permits, and in any event should be construed as an agreement to abide by the lawful and valid rules of the commission); see International Association of Fire Fighters v. City of San Leandro (1986) 181 Cal.App.3d 179, 182, 226 Cal.Rptr. 238, 240 (contracting party not estopped from challenging legality of "void and unenforceable" contract provision to which party had previously agreed); see Perdue v. Crocker National Bank (1985) 38

Cal.3d 913, 926, 216 Cal.Rptr. 345, 353 ("contract of adhesion" will be denied enforcement if deemed unduly oppressive or unconscionable).

Items a, b, and c, which are drawn from Government Code section 11342, subdivision (b), may also correctly be characterized as "exclusions" from the statutory definition of "regulation"--rather than as APA "exceptions." Whether or not these three statutory provisions are characterized as "exclusions," "exceptions," or "exemptions," it is nonetheless first necessary to determine whether or not the challenged agency rule meets the two-pronged "regulation" test: if an agency rule is either not (1) a "standard of general application" or (2) "adopted . . . to implement, interpret, or make specific the law enforced or administered by [the agency]," then there is no need to reach the question of whether the rule has been (a) "excluded" from the definition of "regulation" or (b) "exempted" or "excepted" from APA rulemaking requirements. Also, it is hoped that separately addressing the basic two-pronged definition of "regulation" makes for clearer and more logical analysis, and will thus assist interested parties in determining whether or not other uncodified agency rules violate Government Code section 11347.5. In Grier v. Kizer (1990) 219 Cal.App.3d 422, 268 Cal.Rptr. 244, modified on other grounds, 219 Cal.App.3d 1151e, petition for review unanimously denied, June 21, 1990, the Court followed the above two-phase analysis.

The above is not intended as an exhaustive list of possible APA exceptions. Further information concerning general APA exceptions is contained in a number of previously issued OAL determinations. The quarterly Index of OAL Regulatory Determinations is a helpful guide for locating such information. (See "Administrative Procedure Act" entry, "Exceptions to APA requirements" subheading.)

The Determinations Index, as well as an order form for purchasing copies of individual determinations, is available from OAL (Attn: Tande' Montez), 555 Capitol Mall, Suite 1290, Sacramento, CA 95814, (916) 323-6225, ATSS 8-473-6225. The price of the latest version of the Index is available upon request. Also, regulatory determinations are published every two weeks in the California Regulatory Notice Register, which is available from OAL at an annual subscription rate of $138.

Though the quarterly Determinations Index is not published in the Notice Register, OAL accepts standing orders for Index updates. If a standing order is submitted, OAL will periodically mail out Index updates with an invoice.

48. See Armistead v. State Personnel Board (1978) 22 Cal.3d 198, 149 Cal.Rptr. 1; Stoneham v. Rushen (1982) 137 Cal.App.3d 729, 188 Cal.Rptr. 130; Poschman v. Dumke (1983) 31 Cal.App.3d 932, 107 Cal.Rptr. 596; 1987 OAL Determination No. 13 (Board of Prison Terms, September 30, 1987, Docket No. 87-002), California Administrative Notice Register 87, No. 42-Z, October 16, 1987, pp. 451-453, typewritten version pp. 7-9.

49. Id., Armistead, Stoneham I, and Poschman.

50. 1986 OAL Determination No. 1 (Board of Chiropractic Examiners, April 8, 1986, Docket No. 85-001), California Administrative Notice Register 86, No. 16-Z, April 18, 1986, p. B-13, typewritten version, p. 6.

51. See Poschman v. Dumke (1983) 31 Cal.App.3d 932, 943, 107 Cal.Rptr. 596, 603; and Armistead v. State Personnel Board (1978) 22 Cal.3d 198, 203-204, 149 Cal.Rptr. 1, 3-4.

52. 1988 OAL Determination No. 3 (State Board of Control, March 7, 1988, Docket No. 87-009) California Regulatory Notice Register 88, No. 12-Z, March 18, 1988, pp. 855, 864; typewritten version, p. 10.

53. Armistead v. State Personnel Board (1978) 22 Cal.3d 198, 203, 149 Cal.Rptr. 1, 3.

54. Stoneham v. Rushen (1982) 137 Cal.App.3d 729, 737-38, 188 Cal.Rptr. 130, 135-36.

55. The courts have struck down forms and form instructions on the ground that they violated the APA. (For an extensive discussion of forms in state government, please see 1987 OAL Determination No. 16, pages 21-27.)

56. Id.

57. Department Response, page 5.

58. In Nadler v. California Veterans Board (1984) 152 Cal.App.3d 707, 199 Cal.Rptr. 546 the court considered whether the Department could cancel a Cal-Vet home purchase contract when the veteran purchaser utilized the property as a secondary or get-away home, rather than as a principal place of residence. The court construed the relevant statutory language and concluded that the Department's action was proper. The court's statement (included in the Department's response)

provides in part, "A reading of the decision in Roth, however, makes it abundantly clear that if either the act or the particular Cal-Vet contracts at issue had provided for late charges, then compliance with the APA would have been unnecessary" is not persuasive for the issues presented in this Determination since there are no contractual, i.e. MOU provisions, that contain the challenged rules. (See Department Response, pages 5-6.) This citation does not substantiate the Department's position.

In Perdue v. Crocker National Bank (1985) 38 Cal.3d. 913, 216 Cal.Rptr. 345, the court considered a class action suit challenging the validity of charges assessed by the bank for processing checks drawn on commercial accounts. The issues litigated are not pertinent for this Determination. The court in Perdue noted that a contract of adhesion is enforceable unless two factors are present: the contract or provision does not fall within the reasonable expectations of the weaker or adhering party and, even if consistent with the reasonable expectation of the parties, is unduly oppressive or unconscionable. In its response, the Department, after noting these statements by the Perdue court, concludes that the MOU is not a contract of adhesion, that there is no evidence that the sick leave provisions do not fall within the reasonable expectations of the parties, and that there is nothing unconscionable about the sick leave provisions.

Although the Department in its Response cites Daniels v. Shasta-Tehama-Trinity Joint Community College District, (1989) 212 Cal.App.3d 909, 260 Cal.Rptr. 867, it is unclear how this case could support the Department's position. In Daniels, the court considered the reemployment rights of regular and contract community college teachers, whose jobs were terminated by layoff, to positions created and assigned to temporary, part-time teachers after the layoff. The District relied (in part) on the collective bargaining agreement to support its argument that the appellants had no right to the positions. (Id., 212 Cal.App.3d at 912, 260 Cal.Rptr. at 868-869.) The court noted that the appellants could not have waived any of their statutory rights by entering into the contract. (Id., 212 Cal.App.3d at 923, 260 Cal.Rptr. at 876.)

59. City of San Joaquin v. State Board of Equalization (1970) 9 Cal.App.3d 365, 88 Cal.Rptr. 12.

60. According to Grier v. Kizer (1990) 219 Cal.App.3d 422, 437, 268 Cal. Rptr. 244, 253, a case following 1987 Determination No. 10, the San Joaquin "holding that

statistical accounting techniques are exempt from the APA appears to have lost its precedential value."

61. Roth v. Department of Veterans Affairs (1980) 110 Cal.App.3d 622, 167 Cal.Rptr. 552.

62. (1980) 110 Cal.App.3d 622, 629-630, 167 Cal.Rptr. 552, 556.

63. (1986) 181 Cal.App.3d 179, 226 Cal.Rptr. 238.

64. Id., 181 Cal.App.3d at 183, 226 Cal.Rptr. at 240.

65. If the Department submits the challenged rules to OAL for review, OAL will review, pursuant to Government Code section 11349.1, the proposed regulations for compliance with the APA's procedural and substantive requirements. The APA requires all proposed regulations to meet the six substantive standards of necessity, authority, clarity, consistency, reference, and nonduplication.

A recent case, Hill v. National Collegiate Athletic Association (1990) 223 Cal.App. 1642, 273 Cal.Rptr. 402, provides an important discussion of certain key issues. The Court of Appeal for the Sixth District considered the privacy rights of student athletes who were subject to drug testing by the NCAA. The Court upheld the trial court's ruling that permanently enjoined the NCAA from enforcing any part of its drug testing program against Stanford University or its students. The Court noted that the California right of privacy is stricter than the federal right of privacy. (Id. at page 410.) The Court also noted that article 1, section 1 of the California Constitution guarantees the right to keep one's medical history private. (Id. at page 417.)

66. (1986) 184 Cal.App.3d 651, 229 Cal.Rptr.502.

67. Id., 184 Cal App.3d at 658, 229 Cal.Rptr. at 507.

68. Id., 184 Cal.App.3d at 660, 229 Cal.Rptr. at 509.

69. Department Response, page 7.

70. 2d College Ed. (1982), pp. 478-79.

71. 5th ed., 1979, p. 521. Under the heading "express authority," Black's also states: ". . . An authority given in direct terms, definitely and explicitly, and not left to inference or implication, as distinguished from authority

which is general, implied, or not directly stated or given." (Emphasis added.)

72. Department Response, page 7.

73. Department Response, page 2.

74. Department Response, page 6.

75. Case No. 337747 in the Superior Court of the State of California, County of Sacramento.

76. Respondents' Motion to Reconsider Tentative Decision (Interim Order) Overruling Demurrer and Granting Writ of Mandate; Supporting Memorandum Points and Authorities at pages 9-12.

77. In Natural Resources Defense Council v. Arcata National Corporation (1976) 59 Cal.App.3d 959, 131 Cal.Rptr. 172 ("Natural Resources Defense Council") the court looked at the interaction between general and specific statutes concerning the same subject matter.

According to the Natural Resources Defense Council court:

> "Broadly speaking, a specific provision relating to a particular subject will govern in respect to that subject as against the general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provisions relate. However, it is well settled that the statutes and codes blend into each other and are to be regarded as constituting but a single statute. ONE SHOULD SEEK TO CONSIDER THE STATUTES NOT AS ANTAGONISTIC LAWS BUT AS PARTS OF THE WHOLE SYSTEM WHICH MUST BE HARMONIZED AND EFFECT GIVEN TO EVERY SECTION. Accordingly, statutes which are in pari materia [concerning the same subject matter] should be read together and harmonized if possible. Even when one statute merely deals generally with a particular subject while the other legislates specially upon the same subject with greater detail and particularity, THE TWO SHOULD BE RECONCILED AND CONSTRUED SO AS TO UPHOLD BOTH OF THEM IF IT IS REASONABLY POSSIBLE to do so. (Id., 59 Cal.App.3d at 965, 131 Cal.Rptr. 175-176.)

". . . [A]s a matter of statutory interpretation the various statutes must be harmonized if it is reasonably possible. As stated [by the California Supreme Court], 'even though, in some particular or particulars, the provisions of two or more statutes apparently are in conflict one with the other, nevertheless, if possible and practicable, such SEEMING INCONSISTENCIES SHOULD BE RECONCILED to the end that the law as a whole may be given effect.'" (Id., 59 Cal.App.3d at 971, 131 Cal.Rptr. at 180.) [All citations omitted; capitalized emphasis added; Latin term italicized in original, underlined here].

78. The legal standard for resolving claims of implied repeal is found in In re Thierry S. (1977) 19 Cal.3d 727, 139 Cal.Rptr. 708. In this case the court determined that there was no rational way to reconcile two statutes in which the first statute imposed a requirement that warrantless juvenile misdemeanor arrests could only be made for offenses committed in the presence of the arresting officer and the second statute contained no such limitation. According to Thierry, repeals by implication are recognized only when there is no rational basis for harmonizing the two potentially conflicting statutes, and the statutes are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. The courts, Thierry states, are bound, if possible, to maintain the integrity of both statutes if the two may stand together.

79. Department Response, page 9.

80. We are here referring to those rules that are not specific MOU provisions. The applicability of the APA to specific MOU provisions has not been determined.

81. We wish to acknowledge the substantial contribution of Unit Legal Assistant Melvin Fong and Senior Legal Typist Tande' Montez in the processing of this Request and in the preparation of this Determination.

STATE OF CALIFORNIA

ABSENCE AND ADDITIONAL TIME WORKED REPORT

STD 634 (10-88)

PAY PERIOD			TIME BASE	WWG	CB/ID
1. MONTH	YEAR	SEMIMONTHLY STATUS ONLY ☐ FIRST HALF ☐ SECOND HALF			

2. NAME (First, Middle, Last) | 3. SOCIAL SECURITY NUMBER | 4. POSITION NUMBER

5. ABSENCE WITH PAY

(S) ☐ SICK LEAVE SELF
(SF) ☐ SICK LEAVE FAMILY ILLNESS
(SO) ☐ SICK LEAVE DEATH IN FAMILY (RELATIONSHIP) _____
(A/L) ☐ ANNUAL LEAVE
(V) ☐ VACATION
(B) ☐ BEREAVEMENT LEAVE
(TO) ☐ USING OVERTIME CREDITS
(SH) ☐ USING HOLIDAY CREDITS
(PH) ☐ USING PERSONAL HOLIDAY
(TE) ☐ USING EXCESS HOURS CREDIT
(E) ☐ PAID EDUCATIONAL LEAVE
(M) ☐ SHORT-TERM MILITARY LEAVE (CALENDAR DAYS) _____ (ATTACH MILITARY DUTY ORDERS)
(NDI) ☐ NONINDUSTRIAL INJURY

INDUSTRIAL ILLNESS OR INJURY
(C) ☐ TEMPORARY DISABILITY
(IDL) ☐ REPORT OF INDUSTRIAL INJURY MUST BE SUBMITTED

OTHER _____

(J) ☐ JURY DUTY (MAKE COPY FOR ACCOUNTING)

(SW) ☐ SUBPOENAED WITNESS ☐ PARTY ☐ EXPERT
COURT | CITY

☐ NO FEES RECEIVED ☐ FEES TO BE REMITTED TO STATE
☐ FEES RETAINED

CHARGE ABSENCE TO ☐ VAC ☐ CTO ☐ ABSENCE WITHOUT PAY

6. ABSENCE WITHOUT PAY

(L) ☐ INFORMAL LEAVE GRANTED (11 WORKING DAYS OR LESS)
(A) ☐ ABSENCE WITHOUT LEAVE (5 WORKING DAYS OR LESS) (AWOL)
☐ ABSENCE IS WHILE SERVING A PROBATIONARY PERIOD
(L) ☐ INFORMAL LEAVE GRANTED (15 WORKING DAYS OR LESS) (CSUC)
☐ TEMPORARY LEAVE (30 CALENDAR DAYS OR LESS)

PAY PERIOD IS ☐ QUALIFYING ☐ NONQUALIFYING

7. DATES OF ABSENCES AND EXTRA TIME WORKED

Enter symbol and number of hours in date blocks. See reverse for legends and symbols not noted above. If the absence is for a compensable injury waiting period, add X to other symbol.)

REPORTING	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	TOTAL
7A. HRLY INT/PT HRS TO BE PAID																																
7B. SICK																																
7C. BEREAVEMENT																																
7D. VACATION																																
7E. A/L																																
7F. TO, TH, TE, PH, E, M, SW, J																																
7G. L OR A																																
7H. STRAIGHT TIME WO, P, HC, WE																																
7I. PREMIUM TIME WO, P																																

8. REASON FOR ABSENCE OR EXTRA HOURS WORKED ☐ MEDICAL APPOINTMENT ☐ DENTAL APPOINTMENT

9. CERTIFICATE BY EMPLOYEE

To the best of my knowledge and belief, the facts stated are accurate and in full compliance with legal requirements.

EMPLOYEE SIGNATURE ▶ | DATE

10. RECOMMENDATION AND SUBSTANTIATION OF SUPERVISOR

☐ APPROVAL RECOMMENDED ☐ APPROVAL NOT RECOMMENDED

SUBSTANTIATION SHALL BE REQUIRED FOR SICK LEAVE OF MORE THAN TWO CONSECUTIVE WORK DAYS. SHOW METHOD OF VERIFICATION BELOW.

SIGNATURE OF SUPERVISOR ▶ | DATE

11. STATEMENT BY PHYSICIAN *(Not to be completed by attending physician for industrial illness or injury.)*

☐ DOCTOR STATEMENT ATTACHED

☐ AS PHYSICIAN, I EXAMINED AND TREATED OR PRESCRIBED FOR THIS PATIENT ON THESE DATES

DATE OF RETURN TO WORK | IF STILL DISABLED, GIVE ESTIMATED DATE OF RETURN TO WORK

THE ILLNESS OR INJURY CAUSING THE DISABILITY WAS

SIGNATURE OF ATTENDING PHYSICIAN ▶ | DATE

12. PERIOD ON DISABILITY COMPENSATION — FROM | TO

13. DISABILITY COMPENSATION SUPPLEMENT

HOURS	SICK LEAVE	VACATION	CTO	HOLIDAY CREDIT

14. OFFICIAL DEPARTMENTAL ACTION ☐ APPROVED _____ ☐ DISAPPROVED _____

REVIEWED BY